that it was too technical. A more tenable ground for the decision is suggested by the opinion of Judge Bronson, who specially concurred. Section 11,125, C. L. 1913, it was argued, placed the matter of forfeiture within the discretion of the court, and the circumstances of the case were of a character to provide a satisfactory excuse for the next or failure of the defendant to appear. But see *U. S. v. Marrin, supra,* where a federal court refused to exercise the discretion with which it was vested by statute when defendant had voluntarily gone into another jurisdiction with knowledge of the indictments there impending against him.

CONTRACTS—ILLEGALITY OF RESTRICTIVE COVENANT IN CONTRACT FOR SALE OF CHATTEL UNDER CLAYTON ACT.—Petitioner, a manufacturer of patterns, granted respondent, a retail drygoods company, an agency for the sale of its patterns. Petitioner agreed to sell to respondent at a fifty per cent discount; to replace patterns which were out of date; and to repurchase the stock at the termination of the contract. Among other things, the respondent agreed not to sell goods of a competitor of the petitioner. In an action to restrain respondent from selling goods of a competitor, *held,* the contract was a contract of sale and not an agency contract, and restrictive covenant is unenforceable under Section 3 of the Clayton Act, which provides that: "It shall be unlawful to make a contract for the sale of goods * * * on condition that the purchaser thereof shall not deal in the goods of a competitor * * * where the effect may be to substantially lessen competition." *Standard Fashion Company v. Magrane-Huston Company,* Supreme Court U. S., No. 20, October term, 1921.

At the Common Law such restrictive covenants have been upheld. *Gervais v. Paquette,* 37 Quebec Super. 501; *Whitwell v. Cont. Tob. Co.,* 125 Fed. 455; *Peerless Pattern Company v. Gauntlett Company,* 171 Mich. 158; *Buckhout v. Witwer,* 157 Mich. 406; *Riply & Sons v. Art Wall Paper Company* (Okla.), 136 Pac. 1080; *Home Pattern Company v. Mascho,* 46 Okla. 55. The Sherman Act sought to control this sort of an agreement, but, in the language of the court in the principal case, "with unsatisfactory results so far as the purpose to maintain free competition was concerned." The Clayton Act now "reaches the agreements embraced within its sphere in their incipiency * * * and declares illegal contracts of sale made upon the agreement or understanding that the purchaser shall not deal in the goods of a competitor of the seller which may substantially lessen competition or tend to create a monopoly." By this decision the court does not seek to invalidate every contract where one agrees to buy exclusively from another, but only such contracts which tend to create a monopoly.

CRIMES—ACCIDENTAL KILLING CALLED MURDER TO BRING IT WITHIN THE STATUTE.—After the accused was interrupted by the entrance of neighbors in his attempt to rob a store, he put up his revolver and tried to escape. When again intercepted he drew the weapon, and in the crowd outside the door the revolver was discharged, killing deceased. Defense, that since the gun was accidentally discharged in a struggle for possession and not fired

at anyone, accused could not be convicted of first degree murder. *Held,* the homicide was committed in an attempt to perpetrate a robbery, and accordingly, under state statute, a defense of accidental shooting was of no avail. *Commonwealth v. Lessner* (Pa.), 118 Atl. 24.

The Pennsylvania and similar acts declare that "murder" committed in the perpetration of certain enumerated crimes shall be murder of the first degree. Accordingly, the unlawful killing must be such as would have constituted murder at common law, and mere accidental homicide is not sufficient under these statutes, even if done in pursuit of one of the designated felonious offenses. *State v. Earnest,* 70 Mo. 520; *Com. ex rel. Chauncey v. Keeper,* 2 Ashm. (Pa.) 227. Hence, the value of the decision in the principal case rests specifically upon the question as to whether a pure accident, resulting in homicide occurring during the course of an attempted robbery, would have been held murder at common law. There is considerable *dicta* in the cases, and the rule has been frequently laid down by text writers to the effect that a homicide in the perpetration of a felony is murder, entirely apart from any statutory provision. The engagement in the unlawful act supplies the intent to kill, it is said. But the facts of every case cited in support of this contention fail to show death of a genuinely accidental character such as the defense in our Pennsylvania case presented. The situations cover an act intended by the defendant whose fatal results were beyond his calculation: *Cunningham v. People,* 195 Ill. 550; *State v. Cooper,* 13 N. J. L. 361; *Wellar v. People,* 30 Mich. 16; or the commission of an act by the prisoner in reckless disregard of human life: *Regina v. Serne,* 16 Cox C. C. 311; *Pool v. State,* 87 Ga. 526; *State v. Smith,* 2 Strob. 77; or where he, though having no part in the killing, was party to a conspiracy to commit the felony at the time of the consequent death: *People v. Olsen,* 80 Cal. 122; *U. S. v. Boyd,* 45 Fed. 851. In each of these class of cases the point of a death through accidental causation arising from an act of the accused distinct from his act which constituted the felony was not raised on the facts. It is true there have been convictions of homicide for death by accident or misfortune occurring during the course of an unlawful act, but it is submitted that in each of such recorded cases the conviction, or instructions of the court, have embraced manslaughter and not murder. *State v. Primrose,* 2 Boyce (Del.) 104; *Regina v. Weston,* 14 Cox C. C. 346; *Messer v. Com.,* 25 Ky. L. R. 700; *Pash v. Com.,* 146 Ky. 390. More than this, the common law set forth in *Regina v. Horsey,* 3 Fost. and F. 287, and *Regina v. Serne, supra,* appears to limit murder through an act done in commission of a felony to those cases where said act is known to be dangerous to life, or at least where death was the natural and probable result of the felonious act. In none of the cases which the court cites in the instant case was the act which killed truly accidental, entirely aside from a purposeful attack upon the person or premises of the deceased or another. *Epps v. State,* 19 Ga. 102; *Com. v. Ferko,* 269 Pa. 39; *Shaffner v. Com., 72* Pa. 60. The cases which have been tried under statutes similar to that of Pennsylvania and resulted in convictions have also all been cases where no strictly unintended act was involved. *People v. Bostic,* 167 Cal. 754; *People v. Rischo,* 262 Ill. 596;

State v. Grady Lane, 166 N. C. 333; *Milo v. State*, 59 Tex. Cr. R. 196. As a result of the common law authorities, on its own analysis the court's conclusion in the principal case seems questionable, and there further appear to be no precedents which allow its holding to rest upon modern statutory decisions.

CRIMES—BIGAMY.—D, a married man, contracted a second marriage with a woman who was also already married. On a charge of bigamy, counsel raised the question whether D could be guilty of the crime charged "in view of the fact that the spouse of his second marriage could not have lawfully entered into the marriage." *Held*, that D was properly charged and convicted. *People v. Manfredonio* (1922), 191 N. Y. S. 748.

The court's construction of the bigamy statute is supported by the great weight of authority. BISHOP, STATUTORY CRIMES (Ed. 3), §§ 590-592; WHARTON, CRIMINAL LAW (Ed. 3), § 2020; 7 CORPUS JURIS, p. 1161. The English bigamy statute (which the American statutes have been modelled upon) is not clearly phrased, so that its construction has not been free from difficulty. "The verb 'to marry' and its participle, in the phrase 'if any person being married shall marry another,' etc., cannot have the same meaning in both places; but it denotes a valid marriage in the one and a void form in the other." BISHOP, *op. cit.*, § 590. See also the remarks of Cockburn, C. J., in *Reg. v. Allen*, L. R. 1, C. C. 367, 374, 375, 12 Cox C. C. 193. One court at least has held that the bigamous marriage must be one which would be good but for the existing marriage of the defendant. *Reg. v. Fanning*, 17 Ir. Com. Law 289, 10 Cox C. C. 411. On this construction of the statute the defendant in the principal case was not guilty of bigamy, for there was a reason why the marriage between himself and his second "wife" was void besides the fact that he was already married, viz., the fact that she was already married, too. However, the English cases and the great weight of the American authorities hold, as is stated in the principal case, that "Any person who is legally married and goes through a ceremony of marriage recognized by the law of this state with another person, whether she is able to enter into the marriage contract or not, is guilty of the crime of bigamy" (at p. 749). As regards the fundamental conception of bigamy, WHARTON (*op. cit.*, § 2020) thinks the gist of the offense is "in intrapping another into marital intercourse on a false plea." This view is manifestly too narrow; if it were correct, a full knowledge of the facts by the competent party at the moment when he enters into the bigamous marriage should be a conclusive answer to a prosecution for bigamy. For example, in the principal case neither party was "intrapped," because each party knew of his own marriage. But knowledge that the marriage entered into is bigamous is no defense; quite the opposite: if the competent party knows the facts he probably makes himself a party (accessory or principal depending on the statute) to the bigamous party's crime. BISHOP, *op. cit.*, §§ 591, 594; WHARTON, *op. cit.*, § 2019. Cockburn, C. J., makes what seems to the writer a correct and excellent statement of the policy of the bigamy statute in *Reg. v. Allen*, *supra:* "The ground on which such marriage is very properly made penal